

82-1899

No.

Office - Supreme Court, U.S.

FILED

MAY 24 1983

ALEXANDER L. STEVAS.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

TRANS WORLD AIRLINES, INC.,

Appellant,

v.

NEW YORK STATE HUMAN RIGHTS APPEAL BOARD AND
NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Appellees.

On Appeal from the Court of Appeals
of the State of New York

APPENDIX TO THE
JURISDICTIONAL STATEMENT

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1a

Complaint of New York State Division of Human Rights,
December 14, 1983

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

Case No. CS-32064-73

CI (Ie) CS-2-73

STATE DIVISION OF HUMAN RIGHTS,
Complainant,
- against -

TRANS WORLD AIRLINES, INC.,
Respondent.

COMPLAINT

The New York State Division of Human Rights, with offices at 270 Broadway, New York, New York, by its duly authorized representative, hereby alleges against respondent whose name and address is Trans World Airlines, Inc., 605 Third Avenue, New York, New York as follows:

CHARGE

Respondent has violated Section 296.1 of the Human Rights Law by pursuing policies and/or practices which unlawfully discriminate against female employees because of their sex.

PARTICULARS

1. Upon information and belief, the respondent is a corporation employing four or more persons within the State of New York.

2. Upon information and belief, the respondent maintains a practice and/or policy with regard to pregnant female employees which denies to such employees the same or similar treatment accorded to male employees with temporary disabilities.

3. Upon information and belief, that by reason of the foregoing, the respondent denies to its female employees equal terms, conditions and privileges of employment because of their sex in violation of the Human Rights Law.

Dated: New York, New York
Dec. 14, 1973

JAMES C. AUSTIN
Notary Public
State of New York
No. 41-5128535
Qualified in Queens County
Term Expires March 30, 1974

/s/ Ronni B. Smith
RONNI B. SMITH
Director
Compliance Investigations

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Ronni B. Smith, being duly sworn, deposes and says that she is Director of Compliance Investigations of the State Division of Human Rights, the complainant herein; that she is acquainted with the facts of this proceeding; and that the same is true to her own knowledge as to

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matters therein stated on information and belief, and that
as to these she believes the same to be true.

/s/ Ronni B. Smith
RONNI B. SMITH
Director
Compliance Investigations

Sworn to before me this
14th day of Dec. 1973

JAMES C. AUSTIN
Notary Public
State of New York
No. 41-5128535
Qualified in Queens County
Term Expires March 30, 1974

Amended Answer of Trans World Airlines, Inc.,
March 25, 1977

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

Case No. CS-32064-73

CI-(Ie) CS-2-73

STATE DIVISION OF HUMAN RIGHTS,
v. *Complainant,*
TRANS WORLD AIRLINES, INC.,
Respondent.

AMENDED ANSWER

COMES NOW Respondent, TRANS WORLD AIR-
LINES, INC., and amends its Answer to Complainant's
Complaint herein as follows:

FIRST DEFENSE

Complainant's Complaint fails to state a claim under
the New York Human Rights Law upon which relief can
be granted.

SECOND DEFENSE

The Complainant lacks jurisdiction to hear or prose-
cute the Complaint insofar as Respondent's maternity
leave policies for flight personnel are concerned because
these policies are regulated and required by federal laws,
including the Federal Aviation Act of 1958, 49 U.S.C.
Sect. 1301, et seq., the Occupational Safety and Health
Act of 1970, 29 U.S.C. Sect. 651, et seq., and the Rail-
way Labor Act, 45 U.S.C. Sect. 151, et seq. The Com-

plainant has no jurisdiction to regulate in this field which has been preempted and occupied by the federal government. State regulation in this field would be an intolerable burden on interstate commerce. U.S. Const. art. I, § 8, cl. 3.

THIRD DEFENSE

The Complainant lacks jurisdiction to hear or prosecute the Complaint insofar as the non-inclusion of pregnancy coverage in Respondent's employee benefits policies is concerned because these policies are regulated and required by federal laws, including Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq., the Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Railway Labor Act, 45 U.S.C. § 151 et seq., and the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. The Complainant has no jurisdiction to regulate in this field which has been preempted and occupied by the federal government.

FOURTH DEFENSE

Under Respondent's employee benefits policies, women as a class already receive a larger percentage of total benefits and the provision of the additional benefit sought by Complainant would cause Respondent to be in violation of its duties under federal laws, to wit: Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq., and the Equal Pay Act of 1963, 29 U.S.C. § 206(d). Respondent's duty to comply with federal law, in the event that duty conflicts with state law, is preeminent under the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2.

FIFTH DEFENSE

Even if The State of New York is not preempted from regulation, Respondent's maternity leave policies are required by New York laws imposing safety duties on airlines and employers, including but not limited to N.Y.

Transp. Law Section 96 (McKinney 1973) and *N.Y. Gen. Bus. Law* Section 245(1) (McKinney 1968). These policies are therefore legal and not in violation of the Human Rights Law.

SIXTH DEFENSE

Even if the State of New York is not preempted from regulation, the non-inclusion of pregnancy coverage in Respondent's fringe benefits policies is required by the New York Equal Pay Law, *N.Y. Labor Law* Section 194 (McKinney Supp. 1973-74), and therefore does not violate the Human Rights Law.

SEVENTH DEFENSE

Even if Complainant's allegations were true and correct, which in required particulars they are not, the practices of Respondent do not constitute discrimination on the basis of sex in violation of the Human Rights Law.

EIGHTH DEFENSE

Even if Complainant's allegations were true and correct, which in required particulars they are not, Complainant would not be entitled to relief because the policies of Respondent are based on reasonable foundations, including, but not limited to, safety considerations and the prevention of discrimination.

NINTH DEFENSE

Even if Complainant's allegations were true and correct, which in required particulars they are not, Complainant would not be entitled to relief because the policies of Respondent are required by business necessity.

TENTH DEFENSE

In answer to the specifically enumerated paragraphs of Complainant's Complaint, Respondent answers as follows:

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1.

The Charge contained in the Complaint is denied.
Paragraph one is admitted.

2.

Paragraph two is denied. With respect to maternity leave, Respondent permits each employee, regardless of sex, to continue to work as long as that employee is capable of performing his duties with the degree of safety required by the individual's particular job. With respect to compensation, Respondent provides equal pay for equal work regardless of sex. All other policies of Respondent are also designed and administered in a non-discriminatory manner.

3.

Paragraph three is denied.

WHEREFORE, Respondent, having fully answered, prays that this charge be dismissed, and for such other relief as is deemed proper.

Respectfully submitted,

/s/ Dean Booth
DEAN BOOTH

/s/ J. Stanley Hawkins
J. STANLEY HAWKINS

/s/ Otto F. Feil III
OTTO F. FEIL III

Attorneys for Respondent

Troutman, Sanders,
Lockerman & Ashmore
1400 Candler Building
Atlanta, Georgia 30303
Telephone 658-8000

Recommended Findings of Fact, Decision and Order
of Administrative Law Judge,
New York State Division of Human Rights,
May 23, 1979

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS
on the complaint(s) of
STATE DIVISION OF HUMAN RIGHTS,
Complainant,
- against -

TRANS WORLD AIRLINES, INC.,
Respondent.

Case No. (S) CS-32064-73

RECOMMENDED FINDINGS OF FACT,
DECISION AND ORDER

PROCEEDINGS IN THE CASE

On the 14th day of December, 1973, the above-named Complainant filed a complaint, charging the above-named Respondent with an unlawful discriminatory practice relating to employment, in violation of the Human Rights Law (Executive Law, Article 15) of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in an unlaw-

ful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Irwin H. Pantell, Esq., an Administrative Law Judge of the Division. The hearing was held on various dates between November 24, 1975 and September 28, 1978.

Complainant and Respondent appeared at the hearing. Respondent was represented by Seward & Kissel, Esqs., by Dean Booth and J. Stanley Hawkins, Esq., of Counsel. The Division was represented by Ann Thacher Anderson, Esq., General Counsel, by Rosamond Prosterman, Esq., of Counsel. The final transcript was received on October 12, 1978. Respondent's post-hearing memorandum was received on February 7, 1979 and the Division did not file a memorandum.

FINDINGS OF FACT

The New York State Division of Human Rights, in a Division Initiated Complaint, has charged Respondent, an air carrier and corporate employer of four or more persons within the State of New York, with failure to provide its employees with sick pay and disability benefits during a pregnancy disability and with compelling female flight attendants to notify their supervisors immediately upon learning of their pregnancy and compelling such employees to go on unpaid leave without regard to their ability to perform their services. Respondent provides income maintenance to employees absent from work due to illness or injury in the form of sick pay and sickness or accident disability insurance benefits.

RESPONDENT'S CONTENTIONS

In essence, Respondent contends that the application to it of the New York State Human Rights Law is unconstitutional; that Federal laws have preempted the field; and, that the Respondent is entitled to a bona fide occupational qualification.

STIPULATION

The parties stipulated that the transcript of the testimony of Dr. Andre E. Hellegers be incorporated into the record of these proceedings.

On January 16, 1975, Dr. Hellegers, a Professor of Obstetrics and Gynecology, Professor of Physiology and Biophysics and Director of the Kennedy Institute for the study of human reproduction bioethics, testified, as an expert for the Complainant in *Rosenfeld v. United Airlines, Inc., et al.*, CS 32898-74.

OPINION

The issues presented in this proceeding were considered and disposed of in *Rosenfeld v. United Airlines, Inc.*, decided by the Commissioner September 10, 1975; affirmed 61 A.D. 2d 1010, 402 N.Y.S. 2d 630 (2nd Dept., 1978) affirming N.Y.S.H.R.A.B., Appeal Nos., 3558 and 3065; motion for leave to appeal denied 44 N.Y. 2d 648 (1978), cert. denied — U.S. —, 58 LED 2d 653 (1979).

The preemption argument has been considered and rejected by the Courts. *Eastern Airlines, Inc. v. State Human Rights Appeal Board, etc.*, 65 A.D. 2d 961 —, (1978); *United Federation of Teachers Welfare Fund v. State Human Rights Appeal Board*, 53 App. Div. 2d 808, motion for leave to appeal denied 40 N.Y.2d 809 (1977). Thereafter the Court of Appeals again rejected the argument when urged in a motion to reargue, *Gas Company v. N.Y.S. Human Rights Appeal Board* 41 N.Y. 2d 84 (1976), reargument denied 42 N.Y. 2d 824, decided 4/28/77.

DECISION

Upon the basis of the foregoing I find, that by failing to provide its employees with sick pay and disability benefits during a pregnancy disability; and, that by compelling female flight attendants to take a mandatory unpaid leave at the onset of pregnancy without regard to the

ability of such employee to perform the duties of her occupation, the Respondent committed an unlawful discriminatory practice against its female employees on the basis of their sex, in violation of the Human Rights Law.

ORDER

Upon the basis of the foregoing facts, opinion and decision, and pursuant to the Human Rights Law, it is hereby

ORDERED, that the Respondent Trans World Airlines, Inc., its agents, representatives, employees, successors and assigns shall cease and desist from discriminating against any employee or individual in the terms, conditions and privileges of employment because of the sex of such person; and it is further

ORDERED, that the Respondent Trans World Airlines, Inc., its agents, representatives, employees, successors and assigns shall take the following affirmative action which will effectuate the purposes of the Human Rights Law:

1. Respondent shall permit pregnant stewardesses to work until their twentieth week of pregnancy provided that said stewardesses, if requested to do so, obtain from their doctor a semi-monthly statement confirming that their continued employment as a stewardess is not a health or safety hazard.

2. From the twentieth to the twenty-eighth week of pregnancy, Respondent may disqualify a pregnant stewardess from further flight duty should it find, as a result of its own medical examination, that said stewardess can no longer perform her duties without risk to her health or the safety of the passengers and crew, or both.

3. During and after the twenty-eighth week of pregnancy, Respondent may disqualify a pregnant stewardess from further flight duty without regard to her physical condition at that time.

4. Respondent shall provide accrued sick leave benefits and disability benefits to female employees for pregnancy-connected disabilities to the same extent it provides such benefits to employees for other types of temporary physical disability.

5. Respondent shall send a memorandum to all supervisory employees, agent, officers and to all recognized unions instructing them that it has a policy of non-discrimination because of sex in the treatment of employees, and that such supervisory employees, agents and/or representatives are required to implement said policy.

6. Respondent shall make available to the duly-authorized representatives of this Division such documents and information as may be necessary for the Division to ascertain whether there is compliance with this Order.

Dated: May 23, 1979
New York, New York

STATE DIVISION OF HUMAN RIGHTS

/s/ Irwin H. Pantell
IRWIN H. PANTELL
Administrative Law Judge

Order of Commissioner,
New York State Division of Human Rights,
June 27, 1979

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

Case No. (S) CS-32064-73

STATE DIVISION OF HUMAN RIGHTS
on the complaint(s) of
STATE DIVISION OF HUMAN RIGHTS,
Complainant,
- against -

TRANS WORLD AIRLINES, INC.,
Respondent.

PROCEEDINGS IN THE CASE

On the 14th day of December, 1973, the above-named Complainant by its Director Compliance Investigations filed a complaint charging the above-named Respondent with an unlawful discriminatory practice relating to employment, in violation of the Human Rights Law (Executive Law, Article 15) of the State of New York.

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Irwin H. Pantell, Esq., an Administrative Law Judge of the Division. The hearing was held on various dates between November 24, 1975 and September 28, 1978.

Complainant and Respondent appeared at the hearing. Respondent was represented by Bruce W. Solow, Esq., and by Troutman, Sanders, Lockerman & Ashmore, Esqs., by Dean Booth, J. Stanley Hawkins, Esq., Robert L. Mote, Esq. and William H. Boice, Esq., of Counsel, and by Seward & Kissel, Esqs., by John Grubb, Esq., of Counsel. The Division was represented by Ann Thacher Anderson, Esq., General Counsel, by Rosamond Prosterman, Esq., of Counsel.

The final transcript was received on October 12, 1978. Respondent's Post-Hearing Memorandum was received on February 7, 1979, and the Division did not file a memorandum.

FINDING OF FACT

1. The New York State Division of Human Rights, in a Division-Initiated Complaint, has charged Respondent, an air carrier and corporate employer of four or more persons within the State of New York, with failure to provide its employees with sick pay and disability benefits during pregnancy-connected disabilities and with compelling female flight attendants to notify their supervisors immediately upon learning of their pregnancy and compelling such employees to go on unpaid leave without regard to their ability to perform their services. Respondent provides income maintenance to employees absent from work due to illness or injury in the form of sick pay and sickness or accident disability insurance benefits.

2. In essence, Respondent contends that the application to it of the New York State Human Rights Law is unconstitutional; that Federal laws have pre-empted

the field; and, that the Respondent is entitled to a bona fide occupational qualification.

3. On January 16, 1975, Dr. Hellegers, a Professor of Obstetrics and Gynecology, Professor of Physiology and Biophysics and Director of the Kennedy Institute for the study of human reproduction bioethics in Washington, D.C., testified, as an expert for the complainant in Case CS-32898-74, *Rosenfeld v. United Airlines, Inc.*, et al.

4. The parties herein stipulated that the transcript of the testimony of Dr. Andre E. Hellegers be incorporated into the record of these proceedings.

5. Dr. Hellegers testified and I find that in the first five months or twenty weeks of pregnancy, the expectant stewardess presents no greater risk than the non-pregnant stewardess; that the twentieth to the twenty-eighth week of pregnancy is a "gray area" in which the individual condition of the pregnant stewardess has to be considered; and that it would not be unreasonable for an airline to require all pregnant stewardess to discontinue flying at the twenty-eighth week.

OPINION

The issues presented in this proceeding were considered and disposed of in Case No. CS-32898-74, *Rosenfeld v. United Airlines, Inc.*, decided by the Commissioner September 10, 1975, aff'd Appeal Nos. 3558 and 3065, confirmed 61 A.D. 2d 1010, 402 N.Y.S. 2d 630 (2nd Dept., 1978), motion for leave to appeal denied 44 N.Y. 2d 648 (1978), cert. denied, — U.S. —, 58 L. ed. 2d 653 (1979). Therefore, evidence of the value of fringe benefits to male employees as a class and to female employees as a class was properly excluded.

The ERISA pre-emption argument has been considered and rejected by the New York Courts. *Eastern Airlines, Inc., v. State Human Rights Appeals Board*,

etc., 65 A.D. 2d 961 (1st Dept. 1978); *United Federation of Teachers Welfare Fund v. State Human Rights Appeal Board*, 53 App. Div. 2d 808 (1st Dept. 1976), motion for leave to appeal denied 40 N.Y. 2d 809 (1977). The Court of Appeals rejected such an argument when urged in a motion to reargue *Gas Company v. N.Y.S. Human Rights Appeal Board* 41 N.Y. 2d 84 (1976), reargument denied 42 N.Y. 2d 824, decided 4/28/77.

The Division, however, is bound by the provisions of Disability Benefits Law, Section 205.3 (as amended by L. 1977, C. 675, effective Aug. 3, 1977) that the liability of the employer provided by that Law is "the exclusive statutory remedy of an employee for disability caused by or arising in connection with a pregnancy."

DECISION

Upon the basis of the foregoing, I find that by failing to provide its employees with sick pay and disability benefits during a pregnancy-connected disability, and, by compelling female flight attendants to take a mandatory unpaid leave at the onset of pregnancy without regard to the ability of such employee to perform the duties of her occupation, the Respondent committed an unlawful discriminatory practice against its female employees on the basis of their sex, in violation of the Human Rights Law.

ORDER

Upon the basis of the foregoing Facts, Opinion and Decision, and pursuant to the Human Rights Law, it is hereby

ORDERED, that the Respondent Trans World Airlines, Inc., its agents, representatives, employees, successors and assigns shall cease and desist from discriminating against any employee or individual in the terms, conditions and privileges of employment because of the sex of such person; and it is further

ORDERED, that the Respondent Trans World Airlines, Inc., its agents, representatives, employees, successors and assigns shall take the following affirmative action which will effectuate the purposes of the Human Rights Law:

1. Respondent shall permit pregnant stewardesses to work until their twentieth week of pregnancy, provided that each such stewardess, if requested to do so, obtain from her doctor a semi-monthly statement confirming that her continued employment as a stewardess is not a health or safety hazard.
2. From the twentieth to the twenty-eighth week of pregnancy, Respondent may disqualify a pregnant stewardess from further flight duty should it find, as a result of its own medical examination, that said stewardess can no longer perform her duties without risk to her health or the safety of the passengers and crew, or both.
3. During and after the twenty-eighth week of pregnancy, Respondent may disqualify a pregnant stewardess from further flight duty without regard to her physical condition at that time.
4. Respondent shall provide accrued sick leave benefits to female employees for pregnancy-connected disabilities to the same extent it provides such benefits to employees for other types of temporary physical disability.
5. Respondent shall send a memorandum to all supervisory employees, agents, officers and to all recognized unions instructing them that it has a policy of non-discrimination because of sex in the treatment of employees, and that such supervisory employees, agents and/or representatives are required to implement said policy.
6. Respondent shall make available to the duly-authorized representatives of this Division such documents and information as may be necessary for the Divi-

sion such documents and information as may be necessary for the Division to ascertain whether there is compliance with this Order.

Dated: June 27, 1979
New York, New York

STATE DIVISION OF HUMAN RIGHTS

/s/ Werner H. Kramarsky
WERNER H. KRAMARSKY
Commissioner

**Notice of Appeal to
New York State Human Rights Appeal Board,
July 12, 1979**

**STATE OF NEW YORK
STATE HUMAN RIGHTS APPEAL BOARD**

Case No. CS-32064-73

STATE DIVISION OF HUMAN RIGHTS,
v. *Complainant,*

TRANS WORLD AIRLINES, INC.,
Respondent.

NOTICE OF APPEAL

Notice is hereby given that Trans World Airlines, Inc., Respondent in the above-captioned action hereby appeals to the State of New York, State Human Rights Appeal Board from the Order issued by Werner H. Kramarsky, Commissioner of the State Division of Human Rights, after a hearing held before the Honorable Irwin H. Pantell, Administrative Law Judge, entered in this action on the 27th day of June, 1979.

This 12th day of July, 1979.

Respectfully submitted,

SEWARD & KISSEL

By: /s/ Anthony R. Mansfield
ANTHONY R. MANSFIELD
DEAN BOOTH
J. STANLEY HAWKINS

63 Wall Street
New York, New York 10005
(212) 248-2800
500 Candler Building
Atlanta, Georgia 30303
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Order of New York State Human Rights Appeal Board,
March 12, 1981

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

Case No. CS-32064-73
Appeal No. 5950

STATE DIVISION OF HUMAN RIGHTS
on the complaint of
STATE DIVISION OF HUMAN RIGHTS,
Complainant-Respondent

vs.

TRANS WORLD AIRLINES, INC.,
Respondent-Appellant

Argued: February 15, 1980

PRESIDING: Honorable Richard Wong

Appearances:

J. Hawkins, Esq., on behalf of Respondent-Appellant
Complainant-Respondent deemed submitted on record.

ORDER

The above-entitled appeal having been timely filed with this Board, and the Board having reviewed and considered the entire record on appeal herein, and the Board

having discharged its narrowly prescribed review function pursuant to Section 297-a(7) of the Human Rights Law as construed by the Court of Appeals in *300 Gramatan Avenue Associates v. State Division of Human Rights*, 45 N.Y.2d 176, and

A majority of the Board having decided that the Order appealed from herein is supported by substantial evidence on the record taken as a whole, it is

ORDERED that the Decision and Order of the Commissioner of the State Division of Human Rights be and the same hereby is in all respects affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

By /s/ Irma Vidal Santaella
IRMA VIDAL SANTAELLA
Chairman

Dated and Mailed: March 12, 1981

Petition to Supreme Court of the State of New York,
Appellate Division, First Department,
April 10, 1981

THE SUPREME COURT OF THE STATE OF
NEW YORK APPELLATE DIVISION
FIRST DEPARTMENT

Case No. _____

TRANS WORLD AIRLINES, INC.,
Petitioner-Appellant,

v.

STATE HUMAN RIGHTS APPEAL BOARD, and the
STATE DIVISION OF HUMAN RIGHTS,
Respondent.

NOTICE OF PETITION

PLEASE TAKE NOTICE that upon the annexed Petition of Trans World Airlines, Inc. as verified by Roger H. Schnapp, and upon the pleadings and the testimony contained in the written transcript of the record of the prior proceedings had herein before the State Division of Human Rights, Trans World Airlines will move this Court at a term to be held at the Appellate Division of the State of New York, First Judicial Department, 27 Madison Avenue, New York, New York, at a term for motion, on May 4, 1981, for an Order pursuant to Section 298 of the New York Executive Law (Human Rights Law) reversing, vacating and annulling the Order of the State Division of Human Rights as affirmed by the State Human Rights Appeal Board on the grounds that such Order is

contrary to law and is not supported by sufficient or substantial evidence on the record taken as a whole.

Dated: New York, New York
April 10, 1981

Respectfully submitted,

By: /s/ Roger H. Schnapp
ROGER H. SCHNAPP, ESQ.
Attorney for Petitioner-
Appellant

TRANS WORLD AIRLINES, INC.
Legal Department
605 Third Avenue
New York, New York 10158
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TO: Commissioner Werner Kramarsky
State Division of Human Rights
Two World Trade Center
New York, New York 10047
Honorable Irma Vidal Santaella, Chairperson
State Human Rights Appeal Board
Two World Trade Center
New York, New York 10047
State Division of Human Rights
Two World Trade Center
New York, New York 10047
Attention: Ann Thatcher Anderson, Esq.
General Counsel
Honorable Robert Abrams
Attorney General
Two World Trade Center
New York, New York 10047

THE SUPREME COURT OF THE STATE OF
NEW YORK APPELLATE DIVISION
FIRST DEPARTMENT

Case No. _____

TRANS WORLD AIRLINES, INC.,
Petitioner-Appellant,

v.

STATE HUMAN RIGHTS APPEAL BOARD, and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents.

PETITION

The Petition of Trans World Airlines, Inc. (hereinafter "TWA"), pursuant to Section 298 of the New York Executive Law (Human Rights Law), respectfully alleges and shows to this Court as follows:

1.

On December 14, 1973, Complainant, STATE DIVISION OF HUMAN RIGHTS (hereinafter "Division"), filed a complaint in its own behalf against TWA, Case No. CS-32064-73, pursuant to Section 297 of the New York Human Rights Law (hereinafter "HRL"). N.Y. [Exec.] 297 (McKinney 1972).

2.

While the complaint was so broad as to be almost meaningless, it developed into a claim that two TWA policies violated the HRL. One issue centered around TWA's former policy of not providing sick pay or sickness or accident disability benefits to employees absent from work

due to normal pregnancy. The other policy challenged is TWA's policy of requiring flight attendants, upon becoming aware of the condition of pregnancy, to immediately notify the company and begin maternity leave of absence. Both policies were alleged to discriminate against TWA's female employees because of their sex in violation of the HRL.

3.

TWA denied the Division's charges and asserted it lacked jurisdiction to hear this matter insofar as TWA's maternity leave policies for flight attendants are concerned because, *inter alia*, these policies are regulated and required by federal laws, including the Federal Aviation Act of 1958, 49 U.S.C. 1301, *et seq.* and the Railway Labor Act, 45 U.S.C. 151 *et seq.* In addition, TWA asserted that the Division had no jurisdiction to regulate in this field of airline safety which has been preempted and occupied by the federal government. TWA contended that state regulation in this field would be an intolerable burden on interstate commerce. U.S. Const. Art. I, Section 8, Cl. No. 3.

TWA also maintained that its maternity leave policies do not constitute discrimination on the basis of sex in violation of the HRL, that its maternity leave policies are based on reasonable foundations, including, but not limited to, safety considerations and that its maternity leave policies are required by business necessity.

4.

A hearing was subsequently held on various dates between November 24, 1975 and September 28, 1978.

5.

Prior to the presentation of evidence, TWA made a motion to dismiss the case on the grounds that the Division did not have jurisdiction or authority to grant the relief sought in the complaint. Transcript at 12. TWA sub-

mitted a memorandum in support of its motion to the Hearing Examiner. Pursuant to the rules of the Division, ruling on TWA's motion was deferred until after completion of the public hearing for consideration by the Commissioner. No response was ever filed by the Division to TWA's motion.

6.

After the close of the evidence, TWA submitted a post-hearing memorandum and, although the Division received several extensions of time, it never filed a post-hearing memorandum.

7.

On May 23, 1979, the hearing examiner issued his Recommended Findings of Facts, Decision and Order which were adopted, with minor modifications, by the Commissioner as his final Order on June 27, 1979. In his Order, the Commissioner refused to consider TWA's motion to dismiss on its merits and refused to make rulings on the issues raised therein. In his Order, the Commissioner found that TWA's requirement that flight attendants begin maternity leaves immediately upon knowledge of pregnancy violated the HRL and ordered TWA to adopt a substitute policy allowing flight attendants to fly up to the twentieth week of pregnancy without any participation in the decision by TWA as to whether they should continue to so fly, the decision being left solely to the flight attendant and her personal physician. In addition, pursuant to the Commissioner's Order, from the twentieth to the twenty-eighth week of pregnancy TWA may disqualify individual flight attendants following its own medical examination, and after the twenty-eighth week of pregnancy, TWA may have a blanket rule prohibiting all pregnant flight attendants from continuing to fly.

8.

The Commissioner also ordered TWA to provide "accrued sick leave benefits to female employees for preg-

nancy-connected disabilities to the same extent it provides such benefits to employees for other types of temporary physical disability." As of the date of the Commissioner's Order, TWA was already providing such benefits and continues to provide such benefits as of the date of this Appeal. Therefore, any controversy surrounding Paragraph 4 of the Commissioner's Order is moot and consequently, while TWA does not agree with those findings, it may not present those issues in the confines of this Appeal.

9.

On July 12, 1979, TWA appealed to the State Human Rights Appeal Board from the Commissioner's Order which found that TWA's requirement that flight attendants begin maternity leaves immediately upon knowledge of pregnancy violated the HRL and which ordered TWA to adopt a substitute policy.

10.

On February 15, 1980, argument was held before the Honorable Richard Wong of the New York State Human Rights Appeal Board. Although counsel for TWA was present, no one from the Division made an appearance.

11.

On March 12, 1981, the State Human Rights Appeal Board issued its Order affirming the Order of the Commissioner of the State Division of Human Rights. Similar to the Commissioner, the Appeal Board in its Order failed to consider the jurisdictional and Constitutional arguments properly raised by TWA.

12.

It is from the Order of the State Human Rights Appeal Board affirming the Order of the State Division of Human Rights that this appeal is brought.

13.

The Order of the State Division of Human Rights as affirmed by the State Human Rights Appeal Board should be vacated and annulled because TWA has been denied its right to due process under the Fourteenth Amendment of the United States Constitution in that, among other reasons, it was denied a fair and impartial hearing.

14.

The Order of the State Division of Human Rights as affirmed by the State Human Rights Appeal Board should be vacated and annulled because the Division lacks jurisdiction to modify TWA's maternity leave policy because the issues in this case concern interstate airline safety, an area in which the State of New York and its agencies may not regulate. It is TWA's position that state regulation in this area would constitute an unconstitutional burden on interstate commerce; that the policy ordered in the case presents a direct conflict with federal mandates applicable to TWA, and therefore is void under the Supremacy Clause of the United States Constitution; that any state regulation in the field of airline safety is invalid because Congress has preempted the field for federal regulation; and, that since the policy in question here has been embodied in a negotiated labor contract, state alteration of that policy is preempted by the Railway Labor Act.

15.

The Order of the State Division of Human Rights as affirmed by the State Human Rights Appeal Board should be vacated and annulled because the Commissioner's Order is not supported by substantial or sufficient evidence and because the overwhelming weight of evidence supports TWA's position that its flight attendant maternity leave policy is a necessity to TWA's business.

WHEREFORE, TWA respectfully requests that this Court vacate and annul the Order of the State Division of Human Rights as affirmed by the State Human Rights Appeal Board and for such other and further relief as is just and proper with the costs and disbursements of this proceeding.

Respectfully submitted,

By: /s/ Roger H. Schnapp
ROGER H. SCHNAPP, ESQ.
Attorney for Petitioner-
Appellant

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Legal Department
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(212) 557-5153

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Order of Supreme Court of the State of New York,
Appellate Division, First Department,
October 7, 1982

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 7, 1982.

Present—Hon. Francis T. Murphy, Jr., Presiding Justice
David Ross
Arthur Markewich
Max Bloom
Sidney H. Asch, Justices.

14606

[M-2548]

TRANS WORLD AIRLINES, INC.,
Petitioner,
- against -

THE STATE HUMAN RIGHTS APPEAL BOARD and
THE STATE DIVISION OF HUMAN RIGHTS,
Respondents.

The above-named petitioner having presented a petition to this Court praying for an order, pursuant to Section 298 of the Executive Law and Article 78 of the Civil Practice Law and Rules, setting aside and annulling the order of the State Human Rights Appeal Board dated March 12, 1981, which affirmed the determination and order of the State Division of Human Rights dated June 27, 1979 which, *inter alia*, refused to dismiss and

determined that TWA's requirement that flight attendant's begin maternity leave upon knowledge of pregnancy violated the New York Human Right Law,

And said proceeding having been argued by Richard E. Rieder of counsel for petitioner, by Ann Thacher Anderson of counsel for respondents, and a brief as amicus curiae having been submitted by Scott A. Raisher of counsel for The Independent Federation of Flight Attendants; and due deliberation having been had thereon,

It is unanimously ordered that the order of the State Human Rights Appeal Board be and the same hereby is confirmed, without costs and without disbursements.

ENTER:

JOSEPH J. LUCCHI
Clerk.

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Notice of Appeal to Court of Appeals
of the State of New York,
November 4, 1982

SUPREME COURT OF THE STATE OF
NEW YORK APPELLATE DIVISION
FIRST DEPARTMENT

Index No. 14606
[M-2548]

TRANS WORLD AIRLINES, INC.,
Petitioner-Appellant,

- against -

STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents-Respondents.

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE that the above-named Petitioner-Appellant Trans World Airlines, Inc., pursuant to CPLR 5601(b)(1), hereby appeals to the Court of Appeals from an order of the Appellate Division, First Department, entered in the office of the Clerk of the Appellate Division on October 7, 1982, which order unanimously confirmed the order of the State Human Rights Appeal Board entered on March 12, 1981, and which order finally determined this proceeding, in which there

is directly involved the construction of the provisions of Article I, Section 8, Clause 3, and Article VI, Clause 2, of the Constitution of the United States, and Petitioner-Appellant Trans World Airlines, Inc. appeals from each and every part of said order of the Appellate Division as well as from the whole thereof.

New York, New York
November 4, 1982

KILPATRICK & CODY
3100 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30043

and

NITKIN ALKALAY HANDLER
& ROBBINS
122 East 42nd Street
New York, New York 10168

Attorneys for Petitioner-
Appellant Trans World
Airlines, Inc.

TO: CLERK OF THE APPELLATE
DIVISION: FIRST DEPARTMENT

CAROLINE DOWNEY, ESQ.
Attorney for Respondents-Respondents
State Division of Human Rights
Two World Trade Center
New York, New York 10047

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**Motion to Dismiss Appeal,
November 18, 1982**

**COURT OF APPEALS
STATE OF NEW YORK**

TRANS WORLD AIRLINES, INC.,
Petitioner-Appellant,
- against -

**STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,**
Respondents-Respondents.

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE that upon the annexed affirmation of Ann Thacher Anderson, dated November 18, 1982 and the record of this proceeding, the undersigned will move this Court at a motion term to be held at Court of Appeals Hall, Eagle Street, Albany, N.Y. on November 29, 1982 at 2 P.M. or as soon thereafter as counsel can be heard (1) for an order dismissing this appeal, taken as of right pursuant to Section 5601(b)(1) of the Civil Practice Law and Rules, because this is not a case in which there is directly involved the construction of the Constitution of the State or of the United States, (2) for such other further relief as to this Court may seem just and proper.

Dated: New York, N.Y.

November 18, 1982

Yours etc.

ANN THACHER ANDERSON
General Counsel

Attorney for Respondents-Respondents
State Division of Human Rights
2 World Trade Center
New York, N.Y. 10047
212/488-7650

Affirmation in Support of Motion to Dismiss Appeal,
November 18, 1982

COURT OF APPEALS
STATE OF NEW YORK

TRANS WORLD AIRLINES, INC.,
Petitioner-Appellant,

- against -

STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents-Respondents.

AFFIRMATION IN SUPPORT OF MOTION
TO DISMISS APPEAL

Ann Thacher Anderson, an attorney admitted to practice in the State of New York, and General Counsel to the State Division of Human Rights, one of the respondents-respondents herein, affirms, subject to the penalties for perjury:

1. The Division seeks an order of this Court dismissing this appeal, which has been taken as of right pursuant to Section 5601(b)(1) of the Civil Practice Law and Rules, because this is not a case in which there is directly involved the construction of the Constitution of the State or of the United States.

2. The decision appealed from, which is not yet officially reported but appears at N.Y.L.J. Nov. 12, 1982 p. 6 col. 1, sustains, pursuant to Section 298 of the Hu-

man Rights Law, a certain order issued by the State Human Rights Appeal Board on March 12, 1981, which affirms an order issued by the Division on June 27, 1979.

3. The Division's order finds that TWA discriminates as to sex in terms, conditions and privileges of employment by compelling every flight attendant to take a mandatory unpaid leave as soon as she learns she is pregnant, without regard to her ability to perform the duties of her job, and by disallowing, to employees who become actually disabled in some way connected with pregnancy, fringe benefits provided by TWA to employees disabled by nonoccupational injury or illness.

4. TWA urged in its petition and briefing to the court below that the order of the Appeal Board should be vacated because the Division's hearing denied TWA due process, because the Division lacks jurisdiction to direct changes in TWA's maternity leave policy, because state regulation would burden interstate commerce, because the Division's order would conflict with federal mandates and is therefore void under the Supremacy Clause, and is preempted by federal airline safety regulation and by federal labor law doctrine, and because the Division's order lacks appropriate evidentiary support. Petition ¶¶ 13-15.

5. The Appellate Division unanimously sustained the orders on review, without opinion.

6. The Division submits that notwithstanding the efforts of TWA to present and preserve questions under the Constitution of the United States, this proceeding does not directly involve the construction of that Constitution or any of its provisions.

a. The claim that the Division denied TWA due process, if not so clearly refuted by the record, would present a question of fact rather than construction of the Fourteenth Amendment.

b. The claim that the Division's order would burden interstate commerce, adjudicated unfavorably to TWA's position in *Colorado Anti-Discrimination Commission v. Continental Air Lines, Inc.*, 372 U.S. 714 (1963), does not raise directly the construction of the Commerce Clause, U.S. Const. Art. I § 8, but only ancillary questions as to the effect of the order and its interrelationship with existing requirements of Sections 701(K) and 708 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-(k), 2000e-7, as amended P.L. 95-555; see also § 2000h-4.

c. The claims of conflict with Federal mandates, preemption by federal airline safety regulation, and preemption by federal labor law doctrine, present at most a question of statutory, not constitutional, construction.

7. The Division submits one copy of its brief to the Appellate Division.

WHEREFORE, no question of constitutional construction being directly involved, the appeal should be dismissed.

Dated: New York, N.Y.

November 18, 1982

/s/ Ann Thacher Anderson

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Order of Court of Appeals of the State of New York,
Granting Motion to Dismiss Appeal,
December 15, 1982

COURT OF APPEALS
OF THE STATE OF NEW YORK

Mo. No. 1215

IN THE MATTER OF TRANS WORLD AIRLINES, INC.,
Appellant,

vs.

STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents.

DECISION COURT OF APPEALS

Motion to dismiss appeal granted and appeal dismissed,
with costs and twenty dollars costs of motion, upon the
ground that no substantial constitutional question is di-
rectly involved.

Motion for Reargument, or in the Alternative,
for Leave to Appeal,
January 17, 1983

COURT OF APPEALS
OF THE STATE OF NEW YORK

Supreme Court, Appellate Division Index No. 14606
[M-2548]

TRANS WORLD AIRLINES, INC.,
Appellant,
- against -

STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents.

NOTICE OF MOTION FOR REARGUMENT,
OR IN THE ALTERNATIVE,
FOR LEAVE TO APPEAL

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of William H. Boice, sworn to the 17th day of January, 1983; the Order of the Commissioner of the State Division of Human Rights, issued on June 27, 1979; the Order of the State Human Rights Appeal Board affirming said Order and issued on March 12, 1981; the Order of the Appellate Division, First Department unanimously affirming said Order and entered in the Office of the Clerk of the Appellate Division, First Department on October 7, 1982; the Order of the Court of Appeals dismissing Appellant's appeal as of right and issued on De-

ember 15, 1982; the record on appeal to said Appellate Division and the briefs filed therein; the brief of Appellant submitted herewith, and upon all the proceedings heretofore had herein, the Appellant will move this Court at a stated term thereof, appointed to be held at the Court House of the Court of Appeals in the City of Albany, State of New York, on the 31st day of January, 1983, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for reargument of Appellant's appeal as of right and upon such reargument for an order reversing the aforesaid Order of this Court upon the ground that the Points specified in the Brief appended hereto were overlooked or misapprehended. In the alternative, Appellant will move for an order allowing an appeal to be taken herein by the Appellant to this Court from said Order of affirmance, pursuant to CPLR 5602(a) (1) (i), and for such other and further relief as may be just and proper.

The grounds upon which such leave is asked are set forth in detail in the attached brief and, concisely stated, are as follows:

1. That questions of law are raised herewith which are questions of vital public importance, to wit:

(a) whether the Division's attempted regulation of an airline safety policy places a burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, U.S. Const., art. I, § 8, cl. 3; and

(b) whether an order invalidating Appellant's maternity policy conflicts with federal safety duties, infringes on an area preempted by federal law, and therefore violates the Supremacy Clause of the United States Constitution, U.S. Const., art. VI, cl. 2;

2. That these questions of law are of substantial importance to interstate air carriers with similar policies throughout the nation and the world;

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3. That the said questions of law have not been passed upon by this Court; and

4. That such appeal is required in the interests of substantial justice.

Dated: January 17, 1983.

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Attorneys for Appellant
Trans World Airlines, Inc.

TO: CAROLYN DOWNEY, ESQ.
State Division of Human Rights
Two World Trade Center
New York, New York 10047
Attorney for Respondent

Affidavit in Support of Motion for Reargument,
or in the Alternative, for Leave to Appeal,
January 17, 1983

COURT OF APPEALS
OF THE STATE OF NEW YORK

Supreme Court, Appellate Division Index No. 14606
[M-2548]

TRANS WORLD AIRLINES, INC.,
Appellant,
- against -

STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION
FOR REARGUMENT, OR IN THE ALTERNATIVE,
FOR LEAVE TO APPEAL

William H. Boice, after being duly sworn, deposes and
says:

1.

I am an attorney for Trans World Airlines, Inc. (hereinafter "TWA"), Appellant in the subject Motion, and am familiar with the facts and proceedings had herein.

2.

I offer this affirmation in support of the instant Motion for Reargument, or in the Alternative, for Leave to Ap-

peal from the Order of the Appellate Division, First Department, which affirmed the Order of the State Commissioner of Human Rights, as further affirmed by the State Human Rights Appeal Board, holding that TWA's maternity leave policy violated the New York Human Rights Law, N.Y. [Exec.] 297 (McKinney 1972).

3.

The pertinent facts are contained in detail in the brief submitted herewith in support of this Motion.

4.

On December 14, 1973, the State Division of Human Rights (hereinafter the "Division") filed a Complaint on its own behalf against TWA, alleging that TWA violated the New York Human Rights Law by maintaining a policy requiring any flight attendant who learns that she is pregnant to notify TWA and immediately begin a maternity leave of absence. TWA consistently maintained that the Division lacked jurisdiction over this matter because: (1) state regulation of an airline safety policy places a burden on interstate commerce in violation of the Commerce Clause of the United States Constitution, U.S. Const., art. I, § 8, cl. 3; and (2) an order invalidating TWA's maternity policy would conflict with federal safety duties and impinge on an area preempted by federal law, thereby violating the Supremacy Clause of the United States Constitution, U.S. Const., art. VI, cl. 2.

5.

On June 27, 1979, without addressing TWA's constitutional arguments, the Division issued an Order requiring TWA to modify its policy of requiring flight attendants to discontinue flying while pregnant. A copy of this Order is attached hereto as Exhibit "A".

6.

The Order of the Division was affirmed by Order of the State Human Rights Appeal Board on March 12, 1981. A copy of this Order is attached hereto as Exhibit "B".

7.

On October 7, 1982, the Appellate Division, First Department, issued an Order without opinion unanimously confirming the Order of the State Human Rights Appeal Board. A copy of this Order is attached hereto as Exhibit "C".

8.

On November 5, 1982, TWA appealed the Appellate Division's Order as of right to the New York Court of Appeals, on the grounds that substantial constitutional issues were directly involved in the case below.

9.

On December 15, 1982, the Court of Appeals dismissed the appeal as of right on the grounds that no substantial constitutional issues were directly involved. The Court issued no opinion with its dismissal.

10.

No previous motion has been made to this Court for permission to appeal.

11.

No application has been made to the Appellate Division, First Department, for permission to appeal to this Court.

12.

For the reasons which appear in the Notice of Motion and in the brief herewith submitted, I respectfully request that reargument on the appeal as of right be

granted, or in the alternative, that leave to appeal to the Court of Appeals be granted in accordance with the provisions of CPLR 5602(a) (1) (i), and for such other and further relief as to this Court may seem just and proper.

/s/ William H. Boice
WILLIAM H. BOICE
KILPATRICK & CODY
3100 Equitable Building
100 Peachtree Street
Atlanta, Georgia 30043
(404) 572-6500

Subscribed and sworn to
before me this 17th day of
January, 1983.

/s/ Rebecca Flury
Notary Public Georgia, State at Large
My Commission Expires Sept. 9, 1985

Order of Court of Appeals of the State of New York,
Denying Motion for Reargument, or in the Alternative,
for Leave to Appeal,
February 23, 1983

COURT OF APPEALS
OF THE STATE OF NEW YORK

Mo. No. 104

IN THE MATTER OF TRANS WORLD AIRLINES, INC.,
Appellant,
vs.

STATE HUMAN RIGHTS APPEAL BOARD and the
STATE DIVISION OF HUMAN RIGHTS,
Respondents.

DECISION COURT OF APPEALS

Motion for vacatur of dismissal order of December 15,
1982 or, alternatively, for leave to appeal, denied in each
respect.

Notice of Appeal to the Supreme Court of the United States,
Received in the Court of Appeals May 18, 1983, and in the
Supreme Court, Appellate Division,
May 19, 1983

IN THE COURT OF APPEALS
OF THE STATE OF NEW YORK

Mo. No. 104

TRANS WORLD AIRLINES, INC.,
v. *Appellant,*

NEW YORK HUMAN RIGHTS APPEAL BOARD and the
NEW YORK STATE DIVISION OF HUMAN RIGHTS,
Appellees,

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Trans World Airlines, Inc., the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Court of Appeals of the State of New York, entered on February 23, 1983, denying appellant's motion for reargument of this Court's dismissal of appellant's appeal or, in the alternative, for leave to appeal.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: May 18, 1983.

GORDON DEAN BOOTH

WILLIAM B. BOICE
Attorneys for Appellant

Of Counsel:
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